

REQUEST FOR COMMENTS

On October 30, 2015, the Supreme Court of Mississippi's Rules Committee on Civil Practice and Procedure sought comments from the bench, the bar, and the public on a proposed amendment to Rule 28 of the Mississippi Rules of Appellate Procedure. Based on the comments received, the Committee modified some language and now submits the attached revised proposal for comment.

Comments must be filed with the Clerk of Appellate Courts at Post Office Box 249, Jackson, Mississippi 39205. **The filing deadline is February 15, 2016.**

RULE 28. BRIEFS

(a) Brief of the Appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) *Certificate of Interested Persons.* This certificate shall list all persons, associations of persons, firms, partnerships, or corporations which have an interest in the outcome of the particular case.

If a large group of persons or firms can be specified by a generic description, individual listing is not necessary.

The certificate shall be in the following form:

Number and Style of Case.

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

(Here list names of all such persons and identify their connection and interest.)

Attorney of record for

Governmental parties need not supply this certificate.

(2) *Tables.* There shall follow a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(3) *Statement of Issues.* A statement shall identify the issues presented for review. No separate assignment of errors shall be filed. Each issue presented for review shall be separately numbered in the statement. No issue not distinctly identified shall be argued by counsel, except upon request of the court, but the court may, at its option, notice a plain error not identified or distinctly specified.

(4) Statement of Assignment. This statement must succinctly give the reasons, if any, that the Supreme Court either must or should retain the case for the reasons stated under Rule 16(b) or (d). The statement should include citations to any cases sought to be overruled or perceived to be in conflict.

(45) *Statement of the Case.* This statement shall first indicate briefly the nature of the case, the course of the proceedings, and its disposition in the court below. There shall follow the statement of facts relevant to the issues presented for review, with appropriate references to the record.

(56) *Summary of the Argument.* The summary, suitably paragraphed, should be a succinct, but accurate and clear, condensation of the argument actually made in the body of the brief. It should not be a mere repetition of the headings under which the argument is arranged. It should seldom exceed two (2) and never five (5) pages.

(67) *Argument.* The argument shall contain the contentions of appellant with respect to the issues presented, and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied on.

(78) *Conclusion.* There shall be a short conclusion stating the precise relief sought.

(b) Pro Se Supplemental Brief in Criminal Appeal. An appellant in a criminal appeal may file a pro se supplemental Brief of the Appellant. This pro se brief may address issues not raised by counsel, but such issues must be based on the record. This pro se brief shall conform to the requirements of Rule 28(a), (e), (f), (h) and (l).

(c) Brief of the Appellee. The brief of the appellee shall conform to the requirements of Rule 28(a) except that a statement of ~~the~~ the issues, of assignment, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(d) Reply Brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. No further briefs may be filed except with leave of the Court. All reply briefs shall contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the reply brief where they are cited.

(e) References in Briefs to Parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as

"appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of the parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," or "plaintiff."

(f) References in Briefs to the Record and Citations. All briefs shall be keyed by reference to page numbers (1) to the record excerpts filed pursuant to Rule 30 of these Rules, and (2) to the record itself.

(1) The Supreme Court and the Court of Appeals shall assign paragraph numbers to the paragraphs in all published opinions. The paragraph numbers shall begin at the first paragraph of the text of the majority opinion and shall continue sequentially throughout the majority opinion and any concurring or dissenting opinions in the order that the opinions are arranged by the Court.

(2) All Mississippi cases shall be cited to either:

(i) the *Southern Reporter* and, in cases decided prior to 1967, the official Mississippi Reports (e.g., *Smith v. Jones*, 699 So. 2d 100 (Miss. 1997); *Thompson v. Clark*, 251 Miss. 555, 170 So. 2d 225 (1965)); or

(ii) for cases decided from and after July 1, 1997, the case numbers as assigned by the Clerk's Office (e.g., *Smith v. Jones*, 95-KA-01234-SCT (Miss. 1997)).

(3) Quotations from cases and authorities appearing in the text of the brief shall be cited in one of the following ways:

(i) preceded or followed by a reference to the book and page in the *Southern Reporter* and/or the Mississippi Reports where the quotation appears (e.g., *Smith v. Jones*, 699 So. 2d 100, 102 (Miss. 1997)); or

(ii) in cases decided from and after July 1, 1997, preceded or followed by a reference to the case number assigned by the Clerk's Office and paragraph number where the quotation appears (e.g., *Smith v. Jones*, 95-KA-01234-SCT (§1) (Miss. 1997)); or

(iii) in cases decided from and after July 1, 1997, preceded or followed by a reference to the book and paragraph number in the *Southern Reporter* where the quotation appears (e.g., *Smith v. Jones*, 699 So. 2d 100 (§1) (Miss. 1997)); or

(iv) in cases decided prior to July 1, 1997, preceded or followed by a reference to the case number assigned by the Clerk's Office and paragraph number where the quotation appears when the case is added to the Court's Internet web site in the new

format, i.e., with paragraph numbers (e.g., *Smith v. Jones*, 93-CA-05678-SCT ¶1) (Miss. 1995)); or

(v) preceded or followed by a parallel citation using both the book citation and the case number citation.

(g) Reproduction of Statutes, Rules, Regulations, etc. If determination of the issues presented requires the study of statutes, rules, or regulations, etc., they shall be reproduced in the brief or in an addendum at the end and they may be supplied to the court in pamphlet form.

(h) Length of Briefs. Except by permission of the court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the statement with respect to oral argument, any certificates of counsel, table of contents, tables of citations, and any addendum containing statutes, rules, or regulations.

(i) Briefs in Cases Involving Cross-Appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant for the purposes of this rule and Rules 30 and 31, unless the parties otherwise agree or the court otherwise orders. The brief for appellee shall contain the issues involved in the appellee's appeal as well as the answer to the brief for appellant.

(j) Briefs in Cases Involving Multiple Appellants or Appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(k) Citation of Supplemental Authorities. When pertinent and significant authorities come to the attention of counsel after the party's brief has been filed, or after oral argument or decision, the party may promptly advise the clerk of the Supreme Court, by letter with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall, without argument, state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

(l) Disrespectful Language Stricken. Any brief containing language showing disrespect or contempt for the trial court will be stricken from the files, and the appropriate appellate court will take such further action as it may deem proper.

(m) Other Briefs. Any brief submitted other than those listed in Rule 28(a), (b), (c), and (d) shall conform to Rules 28 (e), (f), (h), and (l). Any brief filed prior to the filing of the brief of the appellant shall contain a certificate of interested persons as required by Rule 28(a)(1). Any brief exceeding 10 pages in length shall contain tables of contents and authorities in compliance with Rule 28(a)(2).

(n) Filing of Briefs on Electronic Media. All parties filing a brief on the merits of any case with the Clerk of the Supreme Court shall file with that brief a copy thereof in an electronically formatted medium (such as USB Flash Drive or CD-ROM) , and the Clerk shall receive and file such with the papers of that case. All electronic media and electronic files stored thereon must be in an industrial standardized format with the electronic brief stored in the Adobe Portable Document Format (PDF). All electronic media shall be labeled to include the following information:

- (1) the style of the case, and,
- (2) the number of CD-ROMs, i.e., “1 of 2, 2 of 2, etc.,”

[Amended December 28, 1995; December 22, 1997; amended effective May 27, 2004 to make filing of briefs on electronic disks mandatory; amended effective July 1, 2009; amended effective August 2, 2012 to allow pro se supplemental briefs in criminal appeals.]